

## **REMARKS**

Claims 13-19 are pending in this application. Claims 13 and 17 have been amended and claims 18-19 have been added.

The specification has been amended to delete reference to a particular claim and instead refer to an “aspect” of the invention. This is to reflect the fact the original claims 1-3 have been cancelled, so references to the originally filed claims no longer are applicable. Only the words “claim” are changed to “aspect” in each of the corrected paragraphs. Using the term aspect is consistent with the originally filed application, adds no new or expanded matter or narrowed matter.

In the Office Action, claims 13, 14 and 16 are rejected under 35 U.S.C. §102(b) as anticipated by either Ota et al. U.S. Patent No. 5,407,086 (“Ota”) or Vaillencourt U.S. Patent No. 5,337,909 (“Vaillencourt”). Claims 13-16 are rejected under 35 U.S.C. §102(e) as anticipated by Carew et al. U.S. Patent No. 6,044,996 (“Carew”). Claim 15 is rejected under 35 U.S.C. §103(a) as unpatentable over Ota/ Vaillencourt in view of Carew. Claim 17 is rejected under 35 U.S.C. §103(a) as unpatentable over Ota/Vaillencourt/Carew in view of Becker U.S. Design Patent No. D187,435 (“Becker”). The rejection is traversed as follows.

The present invention relates to a PET bottle comprising a base portion and an ornamental portion. In an embodiment, the ornamental portion is formed of a figure such as an animal or human. In an illustrated embodiment, the ornamental portion includes a generally elliptical cross section. This is illustrated for example in Figures 3 and 4. Figure 4 shows a top plan view illustrating the elliptical shape of the ornamental portion (shown as reference number 10 in Figure 3), and below it is the wider bottom base portion 3, shown in a more circular (or less elliptical) profile in the illustration. As discussed on page 7 of the specification for example, the

ornamental portion 10 can be formed not to exceed the external circumference of the base portion 3. The ornamental portion thereby is generally protected from damage during transportation since it is formed such that it does not contact bottles packed for shipment next to it – since the base portion is wider, creating the bottle spacing. One advantage of this structure is that the ornamental portions are protected from damage without the need for packing materials or partitions for protection.

Independent claim 13 has been amended to more clearly recite these features. The cited references (i.e., Ota, Vaillencourt, Carew and Becker) fail to teach or suggest the present invention, including an ornamental portion of animal or human shape wherein the ornamental portion has generally elliptical section, with some features formed on the less curved portion of the ellipse, and also wherein the ornamental portion does not exceed the external circumference of the base portion. Since the cited references lack these teachings, it respectfully is submitted that the rejections have been overcome and the claims are in condition for allowance.

In the Office Action, the Examiner sets forth that Ota, Vaillencourt and Carew each disclose a container comprising an ornamental portion. However, none of these references teach or suggest an ornamental portion having the noted characteristics, relative dimensions or therefore the advantages of the ornamental portion of the present invention. By contrast, Ota's "ornamental" portion is described as an upper barrel portion 4 having a smooth curved shape. Ota does not indicate that portion 4 is in any way ornamental or in the shape of a figurine. Vaillencourt discloses a container having an upper portion 14 defining a sealable closure. The upper portion 14 is not a figurine shaped as an animal or human. Moreover, Carew provides a neck-to-body transition 3 in the form of a generally frusto-conical shaped shoulder that is in no way a figurine portion formed in an animal or human shape.

In the previous Office Action mailed April 14, 2003, the Examiner argues, “(w)ith respect to the ornamental figurine, matters relating to ornamentation and having no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art”. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). However, in *Ex parte Hilton*, the Board of Appeals held that in cases where ornamental features result in a product that is distinct from the reference product, these features are of patentable significance. *Ex parte Hilton*, 148 USPQ 356 (Bd. App. 1965). See also, MPEP 2144.04. In the instant case, the ornamental features of the PET bottle are provided such that the PET bottle is suitable for use as a toy or pedestal after the beverage within the bottle is consumed (See specification, page 7, line 18 to page 8, line 16). Moreover, providing the figurine portion makes the PET bottle suitable for use as a refillable bottle rather than a disposable bottle.

Moreover, the structural shape of the ornamental portion creates structural and functional advantages. For example the packing advantages noted above – whereby the ornamental portion is protected for packing / shipment from adjacent bottles by virtue of its elliptical shape smaller than the bottom portion circumference. In addition, a manufacturing process enabled by the structural features of the present invention provides further insight into their advantages. Heated liquid, such as juice is poured into the PET bottle and the bottle is sealed, such as by applying the cap. As the liquid and bottle cool together, the pressure within the bottle goes down creating an inwardly directed pressure gradient. At this point the inward forces created by the pressure gradient can be absorbed by the decompression panels. By making the upper, ornamental portion of a reduced cross-sectional dimension (and elliptical shape), a greater portion of the structural compression can be borne by the decompression panels – thereby helping the ornamental portion to retain its shape.

In view of the above, rejections of claims 13-17 under 35 U.S.C. §102 and 103 have respectfully been traversed.

**Conclusion**

Based on the foregoing, favorable reconsideration and allowance of the claims is solicited. If necessary, the Commissioner is hereby authorized in this and concurrent replies to charge payment (or credit any overpayment) to Deposit Account No. 50-2298 for any additional fees required under 37 CFR 1.16 or 1.17.

Respectfully submitted,

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